December 6, 2022

The Honorable Peter A. DeFazio
Chairman
The House Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Sam Graves
Ranking Member
The House Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Salud O. Carbajal
Chairman
The House Subcommittee on Coast Guard and Maritime Transportation
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Bob Gibbs
Ranking Member
The House Subcommittee on Coast Guard and Maritime Transportation
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Peter A. DeFazio, Chairman Salud O. Carbajal, Ranking Member Sam Graves and Ranking Member Bob Gibbs,

We write in support of an effort to significantly enhance the Federal Maritime Commission's (FMC or Commission) oversight of predominantly foreign-based ocean common carriers and marine terminal operators and the process of evaluating cooperative working agreements under the Shipping Act of 1984. The views expressed herein are the individual views of the undersigned and may not represent those of the Commission.

While the Ocean Shipping Reform Act of 2022 provided the Commission with important additional authorities, there is more that can be done to assist U.S. shippers. We strongly believe that modifying the process by which the Commission reviews agreements under 46 U.S.C. § 41307(b) would substantially strengthen the Commission's oversight of potentially anti-competitive agreements. Such modifications would be consistent with recent amendments to bolster Commission authority and would complement the extensive monitoring process applicable to the major shipping alliance agreements.

Currently, the Commission cannot *sua sponte* enjoin an agreement that the Commission, as the expert independent regulatory agency, determines to be unreasonably anti-competitive. The Commission must file an action in the U.S. District Court for the District of Colombia and persuade the court to do so. *Fed. Mar. Comm'n v. City of Los Angeles*, 607 F. Supp. 2d 192, 197-98 (D.D.C. 2009). If the Court does not determine that the agreement is unreasonably anti-competitive, then

the agreement automatically becomes effective. Experience has shown that this process is cumbersome and time-consuming; and some would even argue designed to impede the Commission's oversight of agreements.

We believe the Commission should have the authority to disapprove agreements between or among ocean common carriers and marine terminal operators. Specifically, we urge legislation to amend the existing statutory review process to allow the Commission to determine that an agreement violates 46 U.S.C. § 41307(b) and to prohibit the parties from operating pursuant to the agreement. The FMC's determination could then be subject to appeal to the United States Court of Appeals for the District of Columbia Circuit. The parties who are seeking to operate pursuant to the agreement would have the opportunity of demonstrating that the agreement is not unreasonably anti-competitive.

Such key statutory changes to the agreement review process would greatly enhance the Commission's oversight of the competitive aspects of the maritime industry and ensure that we are able to implement the intended purposes of OSRA 2022.

We stand ready to provide any assistance needed to strengthen the Commission's agreement review process.

Sincerely,

/S/

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/S/

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cc: The Honorable John Garamendi
The Honorable Dusty Johnson
Members of the House Subcommittee on Coast Guard and Maritime Transportation
Chairman Maffei, Commissioner Dye and Commissioner Sola, Federal Maritime Commission